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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/068,048	02/08/2002	Stanley Edwin Persall		8308

7590

01/30/2003

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EXAMINER

ABDELWAHED, ALI F

ART UNIT PAPER NUMBER

3712

DATE MAILED: 01/30/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/068,048

Applicant(s)

PERSALL, STANLEY EDWIN

Examiner

Ali Abdelwahed

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☒ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) ____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Priority

Acknowledgment is made of applicant's claim for foreign priority based on an application filed in Canada on 15 February 2001. It is noted, however, that applicant has not filed a certified copy of the 2,337,465 application as required by 35 U.S.C. 119(b).

Information Disclosure Statement

The listing of references in the specification is not a proper information disclosure statement. 37 CFR 1.98(b) requires a list of all patents, publications, or other information submitted for consideration by the Office, and MPEP § 609 A(1) states, "the list may not be incorporated into the specification but must be submitted in a separate paper." Therefore, unless the references have been cited by the examiner on form PTO-892, they have not been considered.

Drawings

The subject matter of this application admits of illustration by a drawing to facilitate understanding of the invention. Applicant is required to furnish a drawing under 37 CFR 1.81. No new matter may be introduced in the required drawing.

Specification

The use of the trademark FRISBEE has been noted in this application. It should be capitalized wherever it appears and be accompanied by the generic terminology.

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Although the use of trademarks is permissible in patent applications, the proprietary nature of the marks should be respected and every effort made to prevent their use in any manner which might adversely affect their validity as trademarks.

Claim Objections

Claims 1, 3, ~~5~~ and ~~6~~ are objected to because of the following informalities:

Claims ~~1~~ and ~~5~~, lines 6 and 2 & 4, respectively, delete "side wall" and insert –sidewall--.

Claims 1 and ~~6~~, lines ~~6~~ and ~~1~~, respectively, delete "the".

Claims ~~1~~ and ~~2~~, lines 7 and 2, respectively, after "...said annular flange..." insert –portion--.

Claim 1, line 7, delete "portions" and insert –portion--.

Claim 3, line 2, delete "depresses" and insert –depressed--.

Claim 3, line ~~3~~, after "...annular sidewall..." insert –portion--.

Appropriate correction is required.

delete "portions" and

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 8-10 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

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Claim 8 recites the limitation "said waterproof, durable, and flexible material" in lines 1 and 2. There is insufficient antecedent basis for this limitation in the claim.

Claims 9 and 10 recite the limitation "said pie-shaped member" in lines 3 and 2, respectively. There is insufficient antecedent basis for this limitation in the claims.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-4 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by U.S. Patent No. 4,212,131 to Ross, Jr.

Ross, Jr. discloses all of the claimed structural limitations recited in claims 1-4 (see figs.1-5, and respective portions of the specification).

Claims 1-3 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by U.S. Patent No. Des. 414,823 to Gardner.

Gardner discloses all of the claimed structural limitations recited in claims 1-4 (see figs.1-4, and respective portions of the specification).

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Claims 1-4 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by U.S. Patent No. 4,919,083 to Axelrod.

Axelrod discloses all of the claimed structural limitations recited in claims 1-4 (see figs.1-11, and respective portions of the specification).

Claims 1-4 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by U.S. Patent No. 3,359,678 to Headrick.

Headrick discloses all of the claimed structural limitations recited in claims 1-4 (see figs.1-4, and respective portions of the specification).

Claims 9, and 10 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by U.S. Patent No. 4,253,672 to Milzoff et al.

Milzoff et al. discloses all of the claimed structural limitations recited in claims 9 and 10 (see figs.1-7, and respective portions of the specification).

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

Claims 9, and 10 are rejected under 35 U.S.C. 102(a) as being clearly anticipated by U.S. Patent No. 6,174,214 B1 to Cooper.

Cooper discloses all of the claimed structural limitations recited in claims 9 and 10 (see figs.1-4, and respective portions of the specification).

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Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 5-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Headrick in view of Cooper.

Headrick in view of Cooper discloses the claimed invention except for the reinforcing member being composed of a flexible woven fabric. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the disc of Headrick in view of Cooper to include the aforementioned limitation for the purpose of added flexibility and durability, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416. See also *Ballas Liquidating Co. v. Allied industries of Kansas, Inc.* (DC Kans) 205 USPQ 331.

Claims 5-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ross, Jr. in view of Milzoff et al.

Ross, Jr. in view of Milzoff et al. discloses the claimed invention except for the reinforcing member being composed of a flexible woven fabric. It would have been obvious to one having ordinary skill in the art at the time the invention was made to

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modify the disc of Ross, Jr. in view of Milzoff et al. to include the aforementioned limitation for the purpose of added flexibility and durability, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416. See also *Ballas Liquidating Co. v. Allied industries of Kansas, Inc.* (DC Kans) 205 USPQ 331.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ali Abdelwahed whose telephone number is (703) 305-3311. The examiner can normally be reached Monday through Friday from 9:00 A.M. to 5:00 P.M.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Derris Banks can be reached on (703) 308-1745.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1148.

AA
01/24/2003

A handwritten signature in black ink, appearing to read 'D. Banks', with a long horizontal line extending to the right.

DERRIS H. BANKS
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3700